LEGAL EDUCATION.*

I HAVE chosen on this occasion, and in performance of the annual duty imposed upon your President, to submit to your attention some thoughts rather practical than academic, and to busy myself more with the facts which surround and compel us than with the theories which may be built upon them. The objects of this Association are very clearly stated in its Constitution thus: "To cultivate the science of Jurisprudence, to promote reform in the law, to facilitate the administration of justice, to elevate the standard of integrity, honor and courtesy in the legal profession, and to cherish the spirit of brotherhood among the members thereof." These are all high and worthy purposes; and a study of our records will show that they have constantly been kept in view, and a genuine progress toward the ultimate and coveted result has been made. If that progress has not gone as fast and as far as one might wish, and the journey's end is still in the distance, it is worth our while to measure the obstacles which have delayed us and the effort necessary for their removal; and it is one of those obstacles which the duties of my later life have forced upon my attention to which I desire now to direct yours.

It is obvious that none of the purposes which we are organized to promote can be accomplished except by influences operating upon the members of the Bar themselves. If Jurisprudence is to be cultivated, it must be by individual lawyers contributing each his separate study to the general advance. If the law is to be reformed, it must be done mainly by those who understand the mysteries of its mechanism, or mischief rather than mending will result. If the administration of justice is to be facilitated, the Bench and the Bar must join in the needed changes and help each other to that end. If integrity and courtesy and brotherhood are to be secured to a

* An address delivered January 15th, 1901, before the State Bar Association by the Honorable F. M. Finch, as President, which resulted in the unanimous vote of the Association in favor of the changes suggested.

greater extent than now exists, it is through the members of the profession, guiding and shaping the activities of their own lives, that the improvement must come. It is plain, therefore, that every influence for good which it is possible for us to exert in the direction of our declared purposes must operate upon the individuals constituting the Bar, primarily and principally, or some degree of failure will bring its disappointment. So far, therefore, as our objects are unattained we must not fail to understand that it is to the lawyer himself that we must appeal; it is the lawyer himself whom we must educate and train to be and become the man we would have him. Any effort which does not strike home to each member of the profession and operate upon his head and heart, his intelligence and morality, the trend and character of his daily life, is quite sure to prove ineffectual.

But all experience teaches us that such an effort, extending over a large body of men, and expected to operate steadily though slowly, through many years and upon changing and mobile varieties of character, has its best chance, its most hopeful opportunity, when it begins with the young men, at the threshold of their careers, and before habit or circumstance has hardened them into ways which we desire to see improved. The young men are our source of supply. They pour in annually the fresh blood of their hopes and ambitions, and as the years run on they become the Bar and make it what it is. I am sure, therefore, that the work of our Association can best attain its declared objects by striving to make that student body in head and in heart, in manners and morals, in every aim and every purpose, fully abreast of the standard of professional excellence which we have set before us.

To do this prudently we must take account of current conditions. They are widely and radically different from those existing fifty years ago when the older men among us, now peacefully counting the scars of our battles, were admitted to the Bar. Then there was no rule of preparation for the study of law and there was no instruction save that obtained in the law office. Men totally unfit registered their names as clerks, and then picked up in a way, both lazy and unsystematic, enough of Blackstone and Kent, and

enough of practice through the copying of papers to pass the very easy and timid examination of a sudden committee drafted from a reluctant bar. The saving element and the only one in the situation was that the clerk became more or less the assistant of the master, and that, through the copying of papers, precedents of pleading and of practice, forms of conveyancing, and briefs upon disputed questions of law passed under the young man's eye slowly enough to be studied with the patient progress of his pen. He absorbed what law he knew rather than studied it. It is quite true that this crude and lax method of study was paralleled by that of the Inns of Court in England which were long mere scenes of revel and festivity, and even yet do not require too much of the men upon their rolls; and that in both countries very able and distinguished lawyers grew up whose names and reputations have survived. But these were men who succeeded, not because of the prevailing system of study, but in spite of it; self-taught men who won their way by the most persistent and industrious labor, and who simply conquered their awkward surroundings. I believe, too, that their fame was largely due to the wide gap which opened between them, and the average practitioner whose low level of acquirement has been so lifted and the gap so narrowed that the same learning and capacity exhibited now has much less of the marvelous about it, and has ceased to excite the wonder out of which fame is born.

But the one good and useful element in the old system has almost wholly disappeared. In general, under existing conditions, the student in the law office copies nothing and sees nothing. The stenographer and the typewriter have monopolized what was his work. The flying symbols and click of the keys have distanced the slow travel of his pen, and he sits outside of the business tide ebbing and flowing around him like some solitary on the sands tired of the book that has grown dull. Difficulties, however, usually breed remedies, and the student's needs very soon evolved Law Schools. They have grown up with astonishing rapidity and in the main working in right directions. At first they failed to recognize fully the duty and responsibility thrust upon them. They became a sort of loafer's

paradise and a hospital for those that had failed elsewhere. The collegian dismissed for incapacity or idleness made a harbor of the law school where he could lie lazily at anchor. But this unhappy condition did not last long. Most of the Schools tightened the reins of discipline, systematized their courses of study, tested their men with rigid examinations, weeded out the idle and the vicious, and tied the classes down to lines of vigorous and faithful study. If there are any which have not emancipated themselves from the loose and lazy ways of the earlier time, they should be subjected to the influence which the massed opinion of the Bar can exert, and induced to lift themselves to the level of the best. For it is the truth of to-day, the inevitable outcome of changed conditions and surroundings, that the future of the Bar is in the hands of the Law Schools. It will rise or fall in learning and ability, in the scope and range of its intelligence, in the measure of its integrity and the tone of its morality, as the Law Schools rise or fall, for they take the young men at their most impressionable age and serve as the mould in which the melted gold of youth, bubbling and restless, is cleared of its adulterants and shaped into the cold firmness of its ultimate purpose. We must face that new condition. We must take the measure of the new duties which it imposes; and the Bar must watch the Law Schools.

I am glad to be able to say that this Association has not neglected that duty, that through its committees on legal education it has done much for the advancement of the Schools; but I think also that the general body of our profession have given little thought and less care to the one agency which most directly affects the standing and character of the Bar. They have been content to entrust their protection against an irruption of the unfit to the barrier provided by the formation of the State Board of Law Examiners. That was a wise measure, and the Board has done its work well. It has winnowed out, better than has ever been done before, the wheat from the chaff, and yet of necessity much material gets through the screen that ought to have been stopped at an earlier stage and in a different way—ought to have been stopped in the Law Schools themselves—will be stopped there when the gen-

eral sentiment of the Bar joins in a demand for higher standards of preparation and longer and more thorough courses of study.

And this brings me to some suggestions for which I alone am responsible, but which I think this Association should take into serious consideration. I believe the time has come when the court of last resort to which has been entrusted the formation of rules for admission to the Bar should amend those rules by requiring a complete High School course of four years or its equivalent as a minimum of preliminary preparation for the study of Law, and a course of three years in a Law School or of four years in a law office as the condition of examination for the Bar. These suggestions involve the inquiry whether the Court will be willing to make such a change, and whether it ought to make it. I may be permitted to say that I know a little something about that Court and its staid and careful ways. I hazard nothing in expressing the assurance that there are no members of the profession more anxious than they to see the standards of legal education elevated and the material of the Bar strengthened and improved; but they feel it to be their duty not to legislate in advance of the public and professional sentiment, and to move slowly and with care along the routes of change. They are conservative; they should be; but I believe it capable of demonstration that the suggested amendment of their rules will meet the cheerful approbation of the Bar and the public, and that the change in and of itself is desirable and prudent.

The general trend of opinion is very manifest when we recall that a majority or almost a majority of the Law Schools of the State, at the expense of both numbers and income, have already adopted the complete High School standard and the three-year course; that Columbia University has gone further by confining her law school after 1903 to college graduates; that the Association of Law Schools of the Nation formed last summer at Saratoga deliberately limited its membership to those which after September, 1901, should require a High School completed course of study, and those who now do or before 1905 should maintain a three-years' course; that the American Bar Association, with a membership radiating all over the

States and reflecting the matured and general views of the profession, passed formal resolutions in 1897 advising both changes; that the Board of Law Examiners of the State, prompted by convictions born of their valuable experience, recommended both the higher preparation and the longer courses; that men of conceded eminence, both at the Bar and on the Bench, as Judge Dillon in his Storrs lectures at Yale, and Judge Brewer of the Federal Court in an address before us, have expressed similar opinions; and that even the metropolitan press, brought to the subject by disgraceful conduct of one or more members of the Bar, have published their conviction that admission ought to be made "more arduous so as actually to discourage those who see in it only a cheap and easy way of getting into a profitable business." Such facts should assure the Court that in making the change it will not be struggling in advance of the sentiment of the day, but will simply put itself abreast of the current of popular thought and yield to an almost unanimous demand.

But I should not stop here. The proposed change must be examined on its merits, and the objections which have been made to it be fairly weighed in the balance. At the outset it is well to have before us the actual situation, and see what and where defects exist to which a remedy should be applied. During the year of 1900 the Board of Law Examiners received 899 applications and examined 876 candidates for admission. Of that number 113 failed once or more than once. Of the whole number only 157 came with an exclusive law office education, and the failures among them reached 25 per cent., while among those who had received in whole or in part a law school education the failures did not exceed 10 per cent. Only about 18 per cent. of the whole nnmber depended upon the law office education alone. These facts are instructive. They show that the young men themselves realize the need of law school instruction, and only a small minority, probably under the pressure of financial needs, omit its advantages. It is obvious also that this minority, after three years of office study, fail to a very serious extent to pass the bar examinations and need at least an added year of study to bring them up to the proper standard of qualification. On the other hand

there is more of failure among the men of the schools than seems explainable by the nervous anxiety of the occasion or the accidents of unreflecting answers. The Examiners assure us that the percentage has been steadily lessening, due undoubtedly to the increasing severity of instruction, and with a uniform lifting of preparation and lengthening of courses the failures should nearly pass away and there should come a higher level of acquirement among those who succeed.

The advantage of a law school course of three years, I think, may be made clear by this consideration. A course of two years can only cover the technical subjects of study and that more or less by a process very like cramming. The classes are too large and the time too short. Much has to be omitted which is very useful and beneficial to allow of what is imperatively needed. The young man is gorged and has little opportunity to digest. And the things omitted under the compulsion of the narrowing time are precisely those which ought to be added to turn out something more than a cheap lawyer. What some of these neglected things are, often crowded out of a course of two years, I shall have occasion later to say, and to make my protest against the neglect.

I insist also that the shorter law school course completed with the present standard of previous acquirement tempts the young scholar to sacrifice thoroughness of preparation to speed of arrival. He sees that by cutting off the fourth and last year of the High School course and at once entering on his three years of law study he can get to the Bar in two years from what should have been his High School graduation. He ought not to be so tempted. It is a wrong to him and to the State. The citizens pay for his course and he has only to take it. Experience and ability have planned its length and its lines of study. It is due to to the State which gives and the boy who receives that he should take the gift unmutilated and complete, and reach that standard of education deemed so necessary to the citizen of a republic resting wholly on intelligence, that it is furnished without fee or reward.

I add another thought which, however, is both a thought and a fact. A low standard of preparation on the part of

the student compels a low standard of instruction on the part of the instructor. The teacher must get down to the level of the taught. The latter must understand, or they will not learn, and, if the teaching goes over their heads and wastes itself in the air, nothing has been accomplished. It is no light matter, this. It touches the capacity, the strength, the vital energy of the law professor himself. You cannot force him to teach day after day and year after year on the low level of present acquirement without a visible and tangible reaction on himself. He ceases to grow up while all the time compelled to grow down. Forced habitually to stoop, he soon forgets how to lift a free head into the air. Those only who have tried to make plain the difficult problems of which the law is full, and have seen how impossible it was to lift some of the insufficiently trained capacities before them to the level of comprehension, can appreciate how the effort shallows the current of thought, how it numbs vitality and saps courage and deadens ambition, and how it tends to lower and weaken the man himself. He ought to grow. The boys about him should be stimulants and not opiates. They should be bright and eager and questioning; putting him to his spurs, and capable of demanding and appreciating the best of his brain and heart, and not some truant from a high school's final year, hurrying to nail a shingle on a door. And so it is for the teacher as well as scholar that I urge the wisdom of more thorough preparation and a longer course of study.

I know the objection most commonly made that in this manner we may shut out those who cannot spare the added time, and whose necessities compel haste, and among whom will be some who are in all respects deserving. Judge Brewer, in an address before you, gave the complete and satisfactory answer, which has been cited in a report of the Law Examiners, but may well be repeated once more. He said: "A perfect answer is that a great many ought to be deterred. A growing multitude is crowding in who are not fit to be lawyers, who disgrace the profession after they are in it, who, in a scramble after a livelihood, are debasing the noblest of professions into the meanest of avocations." Let me add some pertinent facts. I have asked a friend of mine, whose daily occupation compels him to feed upon statistics,

a question as to the growth of the Bar, and he gives me these results: Taking into view the forty years from 1850 to 1890, the population of the State just about doubled, increasing from a little more than three millions to a little less than six millions, while, in the same period, the numbers of lawyers rose from 4,263 to 11,194, or 2,668 in excess of the rate of increase in the population of the State. What the census of last year will indicate will be known later, but I predict that it will show that, while population has somewhat more than doubled in forty years, the numbers of the Bar have trebled. In 1840 there was one lawyer to every 726 of the population, but in 1890 there was one to every 536. Very possibly the new census may show one to every 400; for, in 1895, 467 applicants were admitted to the Bar, while in 1900 there were 913, so that the number just about doubled in five years. Do you realize what these facts mean? They mean that the profession is becoming overcrowded; that the rush is an evil and a hardship, both to the old and the new members; that, in the struggle for patronage, the bold and blatant and unscrupulous may be pushing the modest and honorable and studious to the wall, and that, pressed by the necessities of a livelihood, there is danger that men may be tempted to gain money by very questionable means and are bringing scandal and disgrace upon our profession. Do I state this too strongly? Here again the Metropolitan Press, shocked by a recent rascality, has sounded a note of warning, and said to us from outside the profession, from the standpoint of good citizenship, these ominous words: "It will not be unfitting, either, to regard this as a warning or an admonition to our schools of law to be most conservative and circumspect in their work of adding to the ranks of the profession. There is reason to believe that the great numbers of graduates every year are overcrowing the profession, and that its overcrowded state and the consequent difficulty of making a competency in honorable practices are conditions which conduce to corrupt practices." If, therefore, the changes I advise *do* tend to lessen the number of applicants for admission to the Bar, I regard such result as a benefit and not a harm. The deterrent effects of those changes will keep out no young man who is fit to succeed, but the very increased

effort will make him a stronger and better man, and more worthy and likely to win in the struggle for place and for reputation. We need not fear for such men. No severity of preparation or length of study will scare them away. They are the stuff of which good lawyers are made and will not shrink from the labor or the time required. Rather they will welcome it as giving room for that thorough and deliberate study which they know to be an imperative necessity. I do not worry about them. They are as sure to come to us as they are to live. But the change *will* tend to shut the door on the idle, the lazy, and the unprepared. The members of the medical profession have already shut that door and locked it. They require a full High School course as the minimum of preparation, and then four years of study in some approved School of Medicine. They do not except or prefer the college graduate. He may be, he often is, better prepared, but the four years of study are essential and exacted. Even the veterinary student may not doctor a horse unless he has studied for two years in a competent institution. Is the law so much easier, so much simpler, so much less loaded with responsible duty, that a college graduate may practice it after a two years lingering in a law office and a non-graduate in one year more? I mean to get the responsibility for it out of my own hands at least; for it borders on disgrace to see the profession which should outrank all the rest trailing far in the rear and tempting with its easy-swinging doors a scramble of the unfit.

The change, if it shall come, will naturally be ordered to take effect far enough in the future to avoid interference with those who have already filed their certificates, and the interim will give ample time to provide for the new emergency. The schools will retain their advantage over the law office by the year added to its study-term. They should have that advantage. The student should be induced to prefer what all concede to be the better method of study.

And so I repeat that the time has come when the needed and desirable change should be made; that it is safe and just and useful to make it; that the opinion of the best authorities among Bar and people is in its favor; and, so believing, I hope the measure may be pressed with all the force which this Association can bring to the effort.

But changing the rules is not enough. It is much, but it is not all. When the Court has done *its* duty, the law schools must do *theirs*. With greater capacity in their students, due to a more thorough preliminary education, and three years instead of two in which to do their work, they will be able to teach more deliberately and expansively some things which they now teach in a hurried and imperfect way, and some things which the great majority of them do not teach at all. They must be alive to this duty, responsive to the new demands which the new opportunity, if it shall come, will bring with it. I have left myself room to indicate only two of the subjects which require the added time and the more thorough preparation.

I think the schools should devote more attention to practice than is commonly done. In 1898 a Committee of the American Bar Association, after specific inquiries made of twenty schools, declared: "It will not be unsafe to say that, as law classes are now taught, not one student in ten is able to draw an ordinary pleading in any of the usual forms of action without serious technical defects." What I have already said indicates that the young men will get that necessary knowledge nowhere else. They must become fairly skilled in the use of the tools with which their work is to be done. They must not be left with a good case and a full and studious comprehension of it to fall, nevertheless, over some section sprung from the cloudy depths of an ocean of Code. I do not mean that the whole of our Codes of Procedure should be studied, for the young man has but one life to live; but I do mean that the general outlines of procedure not likely to be seriously changed should be sifted out and put in their natural order for the student's use, and he should be required to draw such pleadings and papers as are incident to an ordinary litigation. Of course, it is very difficult, and probably impossible, to do that effectively in a course of two years already crowded with doctrinal study, but if the course be made longer, the difficulty will disappear, and the added opportunity may well be utilized for a more thorough instruction in practice.

Finally: There is one thing either not taught at all, or so rarely that it is exceptional, which should be taught in every school, and that is the science of jurisprudence, involving

the history and development of the law. In this country it is a national fault that we make lawyers, but never jurists; we study law as an art, but never as a science. That fault is an outcome of our intensely practical lives—never inclined to ask why, but always determined to know what. The mistake of it lies in this: Law is not a mere catalogue of arbitrary rules. If that were so, to know those rules would be enough. Law is a growth, and is growing yet, and will continue to grow when you and I are gone. It has its roots in the distant and dark past, and has pushed up out of the dark, adding girth to the stalk and branches to the stem, and throwing an ever-broadening shadow as it grew. One cannot know it thoroughly and well without knowing the process and phenomena of that growth, or realize the scope and meaning and true force of its doctrines without knowing whence and why they came, and by what attrition of time and circumstance they were rounded into their present shape. Not as we do does the Continental lawyer study law. For him there are no dry husks of doctrine; each is the vital development of a living germ. There is no single bud or fruit of it but has an ancestry of thousands of years; no topmost twig that does not green with the sap drawn from the dark burrows underground; no fiber torn away from it but has been twisted and strained by historic wheels. For him the Roman law, that masterpiece of national growth, is no sealed book to be sneered at as obsolete and elbowed out by a corpulent and insolent Code, but is a reservoir of doctrine drawn from the water-shed of a world's civilization. I would not go so far as did that Committee of the American Bar Association, whose report though unaccepted was an admirable product of their research and their thought. I would not say, as they did, that our whole system of study should be overthrown and in its place be put the study of law as a science and not merely as an art; but I do say that it is a shame to graduate a lawyer densely and absolutely ignorant of the history of his own profession; and that it is entirely possible with a better preparation and a longer course to parallel the lines of technical study with the elements of jurisprudence and the story of the law's share in the progress of civilization. If

there was no other single reason for increasing the required preparation and lengthening terms of study I should deem it an all-sufficient one that the change will furnish opportunity for and open the way to a study of the science of jurisprudence, and will tend to make our young men, not merely technical practitioners, but strong, intelligent, scholarly lawyers, and, what is equally needed, strong, intelligent and scholarly men. For these boys of ours are not to be mere lawyers. They may float for a while in the accustomed waters, but very soon an irresistible undertow sweeps them into the stormy sea and among the pounding waves of political life. They are to be our leaders, our civic rulers, our law makers. What law will *he* make who is stone blind to the law that *has* been made? How will *he* know how to guide our growth who does not understand the growth already attained? Shall we leave our legislator who is to be to propose ignorantly the experiment of laws which were tried and tested in the old years and finally thrown with a swing of disgust into the rag bin of fool projects? No, gentlemen of the bar, no! Our law schools must give us something more than the mere artisan who can draw a pleading or trip a lying witness. Their product must be *men* as well as lawyers, vitalized by the air of historic jurisprudence, fascinated by the absorbing interest of the study, strengthened and lifted by its world-old lessons. I grant that it is not an easy thing to do and that the teacher must first teach himself. But if one may do that in the gray of his gathering winter how much better may those do it who have youth and strength for their handmaids and years for their arena. I grant again that the young men will sometimes be both restless and doubtful, but if you take them firmly in hand and hold them to their work, very soon, if there is the making of a man in them, they will grow eager and joyous in the study, and some day add wealth to its domain. And so I plead with our admirable Court that the schools may have the opportunity through the requirement of higher preparation and longer lines of study to train up men who will be an honor to the profession and a blessing to the State.

And now I must relieve your patience. I have said what I should; I have done what I could. This effort in

behalf of legal education is possibly the last service which I can render to the State in which my life has been lived, and to which I owe both allegiance and gratitude. It might have been more interesting to have discussed before you some problem of the law or some unsettled question of historical jurisprudence; but what I have said has seemed to me a duty not to be postponed or neglected, or in any way subordinated to the mere pleasure of the occasion. No man knows more thoroughly than I do the need of speaking as I have spoken; and whatever the outcome I shall feel at least that I have not been unfaithful to my chosen profession.

F. M. FINCH.